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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,603	08/22/2003	Rodger Graham	03-12265	9804
25189	7590	05/26/2004	EXAMINER	
CISLO & THOMAS, LLP 233 WILSHIRE BLVD SUITE 900 SANTA MONICA, CA 90401-1211			LUGO, CARLOS	
			ART UNIT	PAPER NUMBER
			3676	

DATE MAILED: 05/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/646,603

Applicant(s)

GRAHAM ET AL.

Examiner

Carlos Lugo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. **Claims 20-23 are rejected** under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5,9-12,18,20 and 22-27 of U.S. Patent No. 6,668,602. Although the conflicting claims are not identical, they are not patentably distinct from each other because:

Claim 21 of the current application claims a latch assembly comprising a latch housing having first and second chambers and a recessed portion; a retainer unit partially housed in the first chamber; a handle pivotally connected to the retainer unit and housed at least partially inside the recessed portion when is pivoted to a closed position; a push button unit intermediate between the second chamber and the handle; one or more retention members intermediate the push button unit and the handle in the closed position; an engagement surface intermediate the push button unit and the handle and engaged with the retention member when the handle is in the closed position; and a compression spring housed in the second chamber to bias the push button unit in an upward direction. These limitations can be found in claims 1,2,9,18,20,23 and 24 of US Pat No 6,668,602.

Claim 20 of the current application claims that the one or more retainer members are depressible. This limitation can be found in claims 1,10,20 and 25 of US Pat No 6,668,602.

Claim 22 of the current application claims that a key operates the push button unit. This limitation can be found in claims 4,12 and 27 of US Pat No 6,668,602.

Claim 23 of the current application claims that the torsion spring is located between the retainer unit and the handle for urging the handle in an upward direction. This limitation can be found in claims 2,13 and 28 of US Pat No 6,668,602.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claims 21 and 23 are rejected** under 35 U.S.C. 102(b) as being anticipated by US Pat No 5,469,725 to Yamada (Yamada '725).

Regarding claim 21, Yamada ('725) discloses a latch assembly. The assembly comprises a latch housing (1) having a first and second chambers (2 and 3 respectively) and a recessed portion between the two chambers.

A retainer unit (11) is at least partially housed in the first chamber.

A handle (18) is pivotally connected to the retainer unit and housed at least partially inside the recessed portion when is pivoted to a closed position.

A push button unit (30) is intermediate between the second chamber and the handle.

One or more retention members (34) intermediate the push button unit and the handle in the closed position.

An engagement surface (20) intermediate the push button unit and the handle and engaged with the retention member when the handle is in the closed position.

A compression spring (40) is housed in the second chamber to bias the push button unit in an upward direction.

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As to claim 23, Yamada ('725) discloses that a torsion spring (38) is located between the retainer unit and the handle for urging the handle in an upward direction.

5. **Claims 21-23 are rejected** under 35 U.S.C. 102(b) as being anticipated by US Pat No 5,638,709 to Clavin.

Regarding claim 21, Clavin discloses a latch assembly. The assembly comprises a latch housing (11) having a first and second chambers (at 17 and where 40 is located) and a recessed portion between the two chambers.

A retainer unit (13) is at least partially housed in the first chamber.

A handle (12) is pivotally connected to the retainer unit and housed at least partially inside the recessed portion when is pivoted to a closed position.

A push button unit (40) is intermediate between the second chamber and the handle.

At least one or more retention members (54) intermediate the push button unit and the handle in the closed position.

An engagement surface (55) intermediate the push button unit and the handle and engaged with the retention member when the handle is in the closed position.

A compression spring (42) is housed in the second chamber to bias the push button unit in an upward direction.

As to claim 22, Clavin discloses that the push button unit is operated with key.

As to claim 23, Clavin discloses that a torsion spring (34) is located between the retainer unit and the handle for urging the handle in an upward direction.

Response to Arguments

6. Applicant's arguments filed on August 22, 2003 have been fully considered but they are not persuasive.

Regarding applicant's arguments that Clavin fails to disclose a housing having first and second chambers and a recessed portion (Page 5 Line 19), clearly, Clavin illustrates these limitations. As seen in Figures 2 and 3, the first chamber is located between the recesses 17 (Figure 2) and the second chamber is located where the push button unit 40 is located (Figure 3). The recessed portion is defined by the surface above elements 31 (Figure 3). Therefore, Clavin disclose these limitations.

As to applicant's arguments that Clavin fails to disclose that the push button unit is intermediate between the second chamber and the handle (Page 6 Line 3), Clavin disclose this limitation. The applicant by saying "the push button unit is intermediate between the second chamber and the handle" does not necessarily means that the push button unit is part of the handle. As seen on Figure 3, the push button unit 40 is intermediate between the second chamber (the side where 11 is pointing) and the handle (at 55), in other words, the push button is between the second chamber and the handle.

As to applicant 's arguments that Clavin fails to disclose that the push button unit may be rotated (Page 6 Line 9), the applicant is not positively reciting that the push button unit rotates, the applicant just claim that may rotate, "may rotate" and "rotate" are two different things.

Regarding applicant's comment that Yamada is not believed to anticipate the claims, it should be noted that such comment fails to satisfy the requirements of 37 CFR 1.111 and therefore is insufficient and unpersuasive.

Conclusion

7. This is a continuation of applicant's earlier Application No. 10/037750, now US Pat No 6,668,602. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Lugo whose telephone number is 703-305-9747. The examiner can normally be reached on 9-6pm EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel Stodola can be reached on 703-308-2686. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5771.

A handwritten signature in cursive script that reads "Daniel P. Stodola". The signature is written in dark ink and is positioned above the printed name and title.

Carlos Lugo
AU 3676

May 13, 2004.

DANIEL P. STODOLA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600